

REFERENCE TITLE: **duty to ask and report**

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SB 1429

Introduced by
Senators Martin: Bee; Representative Paton

AN ACT

AMENDING SECTION 13-3620, ARIZONA REVISED STATUTES; RELATING TO FAMILY OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 13-3620, Arizona Revised Statutes, is amended to
3 read:

13-3620. Duty to ask about or report abuse, physical injury, neglect and denial or deprivation of medical or surgical care or nourishment of minors; medical records; exception; violation; classification; definitions

9 A. Any person who reasonably believes that a minor is or has been the
10 victim of physical injury, abuse, child abuse, a reportable offense or
11 neglect that appears to have been inflicted on the minor by other than
12 accidental means or that is not explained by the available medical history as
13 being accidental in nature or who reasonably believes there has been a denial
14 or deprivation of necessary medical treatment or surgical care or nourishment
15 with the intent to cause or allow the death of an infant who is protected
16 under section 36-2281 shall immediately report or cause reports to be made of
17 this information to a peace officer or to child protective services in the
18 department of economic security, except if the report concerns a person who
19 does not have care, custody or control of the minor, the report shall be made
20 to a peace officer only. A member of the clergy, christian science
21 practitioner or priest who has received a confidential communication or a
22 confession in that person's role as a member of the clergy, christian science
23 practitioner or a priest in the course of the discipline enjoined by the
24 church to which the member of the clergy, christian science practitioner or
25 priest belongs may withhold reporting of the communication or confession if
26 the member of the clergy, christian science practitioner or priest determines
27 that it is reasonable and necessary within the concepts of the religion.
28 This exemption applies only to the communication or confession and not to
29 personal observations the member of the clergy, christian science
30 practitioner or priest may otherwise make of the minor. For the purposes of
31 this subsection, "person" means:

1. Any physician, physician's assistant, optometrist, dentist, osteopath, chiropractor, podiatrist, behavioral health professional, nurse, psychologist, counselor or social worker who develops the reasonable belief in the course of treating a patient.
 2. Any peace officer, member of the clergy, priest or christian science practitioner.
 3. The parent, stepparent or guardian of the minor.
 4. School personnel or domestic violence victim ~~advocate~~ ADVOCATES who develop the reasonable belief in the course of their employment.
 5. Any other person who has responsibility for the care or treatment of the minor.

B. A report is not required under this section for conduct prescribed by sections 13-1404 and 13-1405 if the conduct involves only minors who are

1 fourteen, fifteen, sixteen or seventeen years of age and there is nothing to
2 indicate that the conduct is other than consensual.

3 C. If a physician, psychologist or behavioral health professional
4 receives a statement from a person other than a parent, stepparent, guardian
5 or custodian of the minor during the course of providing sex offender
6 treatment that is not court ordered or that does not occur while the offender
7 is incarcerated in the state department of corrections or the department of
8 juvenile corrections, the physician, psychologist or behavioral health
9 professional may withhold the reporting of that statement if the physician,
10 psychologist or behavioral health professional determines it is reasonable
11 and necessary to accomplish the purposes of the treatment.

12 D. Reports shall be made immediately by telephone or in person and
13 shall be followed by a written report within seventy-two hours. The reports
14 shall contain:

15 1. The names and addresses of the minor and the minor's parents or the
16 person or persons having custody of the minor, if known.

17 2. The minor's age and the nature and extent of the minor's abuse,
18 child abuse, physical injury or neglect, including any evidence of previous
19 abuse, child abuse, physical injury or neglect.

20 3. Any other information that the person believes might be helpful in
21 establishing the cause of the abuse, child abuse, physical injury or neglect.

22 E. A health care professional who is regulated pursuant to title 32
23 and who, after a routine newborn physical assessment of a newborn infant's
24 health status or following notification of positive toxicology screens of a
25 newborn infant, reasonably believes that the newborn infant may be affected
26 by the presence of alcohol or a drug listed in section 13-3401 shall
27 immediately report this information, or cause a report to be made, to child
28 protective services in the department of economic security. For the purposes
29 of this subsection, "newborn infant" means a newborn infant who is under
30 thirty days of age.

31 F. Any person other than one required to report or cause reports to be
32 made under subsection A of this section who reasonably believes that a minor
33 is or has been a victim of abuse, child abuse, physical injury, a reportable
34 offense or neglect may report the information to a peace officer or to child
35 protective services in the department of economic security, except if the
36 report concerns a person who does not have care, custody or control of the
37 minor, the report shall be made to a peace officer only.

38 G. A person who has custody or control of medical records of a minor
39 for whom a report is required or authorized under this section shall make the
40 records, or a copy of the records, available to a peace officer or child
41 protective services worker investigating the minor's neglect, child abuse,
42 physical injury or abuse on written request for the records signed by the
43 peace officer or child protective services worker. Records disclosed
44 pursuant to this subsection are confidential and may be used only in a

1 judicial or administrative proceeding or investigation resulting from a
2 report required or authorized under this section.

3 H. When telephone or in-person reports are received by a peace
4 officer, the officer shall immediately notify child protective services in
5 the department of economic security and make the information available to
6 **them CHILD PROTECTIVE SERVICES**. Notwithstanding any other statute, when
7 child protective services receives these reports by telephone or in person,
8 it shall immediately notify a peace officer in the appropriate jurisdiction.

9 I. Any person who is required to receive reports pursuant to
10 subsection A of this section may take or cause to be taken photographs of the
11 minor and the vicinity involved. Medical examinations of the involved minor
12 may be performed.

13 J. A person who furnishes a report, information or records required or
14 authorized under this section, or a person who participates in a judicial or
15 administrative proceeding or investigation resulting from a report,
16 information or records required or authorized under this section, is immune
17 from any civil or criminal liability by reason of that action unless the
18 person acted with malice or unless the person has been charged with or is
19 suspected of abusing or neglecting the child or children in question.

20 K. Except for the attorney client privilege or the privilege under
21 subsection L of this section, no privilege applies to any:

22 1. Civil or criminal litigation or administrative proceeding in which
23 a minor's neglect, dependency, abuse, child abuse, physical injury or
24 abandonment is an issue.

25 2. Judicial or administrative proceeding resulting from a report,
26 information or records submitted pursuant to this section.

27 3. Investigation of a minor's child abuse, physical injury, neglect
28 or abuse conducted by a peace officer or child protective services in the
29 department of economic security.

30 L. In any civil or criminal litigation in which a child's neglect,
31 dependency, physical injury, abuse, child abuse or abandonment is an issue, a
32 member of the clergy, a christian science practitioner or a priest shall not,
33 without his consent, be examined as a witness concerning any confession made
34 to him in his role as a member of the clergy, a christian science
35 practitioner or a priest in the course of the discipline enjoined by the
36 church to which he belongs. Nothing in this subsection discharges a member
37 of the clergy, a christian science practitioner or a priest from the duty to
38 report pursuant to subsection A of this section.

39 M. If psychiatric records are requested pursuant to subsection G of
40 this section, the custodian of the records shall notify the attending
41 psychiatrist, who may excise from the records, before they are made
42 available:

43 1. Personal information about individuals other than the patient.
44 2. Information regarding specific diagnosis or treatment of a
45 psychiatric condition, if the attending psychiatrist certifies in writing

1 that release of the information would be detrimental to the patient's health
2 or treatment.

3 N. If any portion of a psychiatric record is excised pursuant to
4 subsection M of this section, a court, ~~upon~~ ON application of a peace officer
5 or child protective services worker, may order that the entire record or any
6 portion of the record that contains information relevant to the reported
7 abuse, child abuse, physical injury or neglect be made available to the peace
8 officer or child protective services worker investigating the abuse, child
9 abuse, physical injury or neglect.

10 O. A PERSON WHO HAS A DUTY TO REPORT PURSUANT TO SUBSECTION A OF THIS
11 SECTION HAS A DUTY TO ASK A MINOR FOR INFORMATION CONCERNING THE SUSPECTED
12 PHYSICAL INJURY, ABUSE, CHILD ABUSE, REPORTABLE OFFENSE OR NEGLECT, INCLUDING
13 THE NAME OR AGE OF THE ALLEGED PERPETRATOR.

14 P. A person who violates this section is guilty of a class 1
15 misdemeanor, except if the failure to ASK OR TO report involves a reportable
16 offense, the person is guilty of a class 6 felony.

17 P. Q. For the purposes of this section:

18 1. "Abuse" has the same meaning prescribed in section 8-201.

19 2. "Child abuse" means child abuse pursuant to section 13-3623.

20 3. "Neglect" has the same meaning prescribed in section 8-201.

21 4. "Reportable offense" means any of the following:

22 (a) Any offense listed in chapters 14 and 35.1 of this title or
23 section 13-3506.01.

24 (b) Surreptitious photographing, videotaping, filming or digitally
25 recording of a minor pursuant to section 13-3019.

26 (c) Child prostitution pursuant to section 13-3212.

27 (d) Incest pursuant to section 13-3608.